

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 963 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYESHKUMAR RAMJIBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKTESH V PATEL for Petitioner

MR HH PATEL, APP, for respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/12/1999

ORAL JUDGEMENT

1. The petitioner came to be externed from the territorial jurisdiction of Commissioner of Police, Ahmedabad city and contiguous districts of Ahmedabad [Rural], District Gandhinagar, Kheda and Mehsana for a period of two years by virtue of an order passed by the Deputy Commissioner of Police, Control Room, Ahmedabad

city on 26th July 1999 [Annexure 'D']. Prior to issuance of this order, a notice was issued as required u/s 59 of the Bombay Police Act, 1951 [hereinafter referred to as 'the Act' for short] on 6th November 1998 and the proposed externee was asked to present himself before the said authority on 23rd November 1998 at 11.00 a.m. to show cause why he should not be externed from the above stated areas, in exercise of powers u/s 56 of the Act considering the allegations made against him. The proposed externee presented himself before the authority, externment proceedings were conducted and ultimately, the order was passed. During the course of externment proceedings, the proposed externee examined 12 witnesses to indicate that the allegations made in the notice are not correct. The externing authority however while passing the order came to a conclusion that the allegations made against the externee were proved and therefore, it was necessary to extern him from the areas stated above.

2. The notice as well as order contain three allegations, namely,

[i] The petitioner extorts money by way of installments [HAPTAS] from the businessmen of Rohidasnagar and Ohmnagar areas. Those businessmen who refuse to give money are threatened and robbed by the petitioner with the help of knife.

[ii] The petitioner does not pay for the articles purchased by him from the businessmen trading in Kailashnagar and Kalapinagar areas. The petitioner threatens the business men who demand money for the purchased articles.

[iii] The petitioner is engaged in eve-teasing in Kalapinagar area and those who try to dissuade him from such activities, the petitioner threatens them with the help of a knife.

3. The externing authority recorded a subjective satisfaction while passing the order that, considering the material before it, the allegations are proved against the externee - petitioner. The activities of the petitioner have resulted into an atmosphere of fear amongst the witnesses have expressed their desire to maintain anonymity out of the fear and therefore, it is necessary to extern the petitioner in exercise of powers

u/s 56[b] of the Act and the order was passed.

4. The petitioner challenges the order of externment mainly on the ground that there is non-application of mind by the externing authority.

5. Mr. Muktesh Patel, learned Advocate appearing for the petitioner has restricted his arguments only to the above ground. He submitted that if the notice and the order are read together, they indicate a gross non-application of mind by the externing authority. According to him, the authorities have not considered the depositions of 12 witnesses examined by the petitioner during the course of externment proceedings. He submitted further that both the notice as well as order indicate that the petitioner is engaged in alleged activities alleged since August 1998. But if the offences registered against him are seen, they relate to the years 1996 and 1997. This is a gross non-application of mind, according to Mr. Patel. This would therefore vitiate the order of externment.

5.1 Mr. Patel submitted that the externee is an active member of Bahujan Samaj Party [B.S.P.] and earns his bread by professing photography and he is the only bread earner of the family. He has been politically victimized and therefore also, the order may be quashed by allowing this petition.

6. Mr. H.H. Patel, learned APP has opposed this petition. He has drawn attention of this Court to para-5 of the affidavit in reply. He has also taken this Court through the file of the externment proceedings to indicate that the authority has given full opportunity to the externee during the externment proceedings. He has also read over the narration of the depositions of these witnesses to indicate that the externing authority has properly considered the depositions of the 12 witnesses examined by the proposed externee during the externment proceedings. He submitted that the authority has therefore taken into consideration all relevant aspects and has arrived at a subjective satisfaction for the need for exercise of powers of externment and therefore, the Court may not interfere with these orders. He has placed reliance on the decision in the case of Abedin Rasul Bombaywala v/s Commissioner of Police & ors. as reported in 1986 GLR 986. He, therefore, submitted that the petition may therefore be dismissed.

6.1 Mr. H.H. Patel, learned APP has further submitted that the mention of August 1998 in the notice as well as

grounds of externment is on basis of the statements of anonymous witnesses whose identity has not been disclosed and not on basis of registered offences alone and therefore, the argument made on behalf of the petitioner may not be accepted.

7. Considering the rival side contentions, what is required to be considered is whether the order suffers from the vice of non-application of mind or whether the order reflects political victimization of the petitioner.

8. For the sake of convenience, the second point is taken up first. Barring bald allegation that the impugned order is the outcome of political victimization, there is nothing on record to indicate that the petitioner is an active worker of B.S.P. or that he has had any political conflicts on this account. In absence of any material, this argument cannot be accepted.

9. As regards the allegation of non-application of mind on part of the externing authority, it may be noted that the order of externment indicates that the externing authority has taken into consideration the explanation and material produced by the proposed externnee during the externment proceedings and after a careful study thereof, the authority recorded a subjective satisfaction that the petitioner is a dangerous person and is using force in his criminal activities since August 1998. It is clear from the tenor of the order and the show cause notice that the order is based not only on basis of offences registered against the petitioner, but also on basis of statements of witnesses, whose identity has not been disclosed, as they apprehend risk to their person and property from the externnee. This, therefore, cannot be said to be a material reflecting non-application of mind.

10. Mr.H.H.Patel, learned APP has, read over from the files of the proceedings the narration of the statements of all the 12 witnesses examined by the petitioner and it is clear that none of the witnesses is able to indicate that he knows anything about the registration of offences against the petitioner, about his activities, about his associates and circle of activities, and therefore, the authority has arrived at a subjective satisfaction that their version cannot be accepted. This Court is not supposed to apply an objective test about the subjective satisfaction arrived at by the detaining authority, while entertaining the petition under Article 226 of the Constitution of India. Mr.H.H.Patel, learned APP has placed reliance on the decision in the case of Abedin Rasul Bombaywala [supra]. In para 8, the Division Bench

of this Court held that a subjective satisfaction arrived at by the externing authority on proper materials placed before it, cannot be interfered with in proceedings under Article 226 of the Constitution. Like in that case, here also, it has been demonstrated by the learned APP that the externing authority did have ample material before it to arrive at a subjective satisfaction. There were statements of anonymous witnesses which have been considered. The offences registered against the petitioner have also been considered and the subjective satisfaction is recorded. Barring the point argued, there was nothing to indicate non-application of mind which is the sole ground of attack on the impugned order by learned Advocate for the petitioner. In this view of the matter, the petition cannot be entertained.

11. It may be noted that the petitioner had preferred an appeal before the appropriate authority u/s 60 of the Act. The appellate authority has categorically observed that 12 witnesses seem to be ignorant about the criminal activities of the petitioner apart from they being from same area and have some nexus with extortee. All these aspects are considered both by the externing authority and the appellate authority and this Court therefore sees no reason to interfere with the orders in exercise of powers of Article 226 of the Constitution of India. Under no circumstances, it can be said that the externing authority had no material to arrive at a subjective satisfaction. It has been taken into consideration as it can be seen and therefore, the allegation about the non-application of mind also, cannot be accepted. The main ground of non-application of mind is nonacceptance of deposition of 12 witnesses. This ground cannot be accepted. What is expected of the authority is to apply its mind and arrive at a decision. It can never be expected of an authority to accept these depositions irrespective of merits. The second ground claimed for indicating non-application of mind is an averment in the notice as well as the order that the petitioner is involved in illegal activities since August 1998. But this decision is arrived at not only on basis of the registered offences, but also on basis of the statement of anonymous witnesses. This being so, allegation cannot be accepted regarding non-application of mind. The petition therefore must fail.

11. Mr. Muktesh Patel, learned Advocate for the petitioner placed reliance on the following decisions :-

[a] 1999[1] GLH 913 in case of Mustufi Miya v/s State of Gujarat and others. In order to show that

this decision would be applicable, Mr. Patel had produced copy of judgement in Sessions Case No.374/98 rendered by the learned Additional Sessions Judge, Court No.24, Ahmedabad on 29th September 1999, wherein the petitioner was one of the accused and he came to be acquitted. In Mustufi Miya's case [supra], the authority took into consideration Cr.R. No. 52/93 and was shown as pending, whereas in fact the petitioner was acquitted on 23rd May 1997. The show cause notice was of 30th May 1997 and the Court held that the show cause notice was mechanically issued as the acquittal was not considered. This decision cannot help the petitioner for the reason that the order of acquittal which is produced before this Court, is subsequent to the date of order of externment and therefore, it cannot be said that an error is committed by the externing authority while taking into consideration this offence while passing the order.

[b] Mr.Muktesh Patel also relied on the decision in the case of Suresh H. Marathi v/s Deputy Commissioner of Police, Surat city, Surat as reported in 32[1] GLR 296. There, the Court held that where an order of detention is based on an incident and if a criminal court has on appreciation of evidence acquitted the detenue of the charges arising out of that incident, the order would be bad. In the instant case, there is nothing to indicate that order was passed on any incident wherein the petitioner was acquitted before the order was passed. This decision also therefore, will not help the petitioner.

[c] Lastly, Mr.Muktesh Patel relied on the decision in the case of Suleman Hussa v/s State of Gujarat and others as reported in 30[1] GLR 101. In that case, the Court held that if there is non-application of mind, the order of externment is liable to be quashed. A mistake in statement of an important fact is glaring and would vitiate the order. In the instant case, Mr. Patel could not point out any mistake indicating non-application of mind and the petition therefore cannot be allowed on this count.

[d] Mr. Muktesh Patel submitted that the authority has not considered that MLAs and Municipal Corporators have issued a certificate of

character in favour of the petitioner and the authority has not considered this. In this regard, it may be noted that when the authority has arrived at a subjective satisfaction on materials placed before it, the Court will not enter into exercise of considering whether objectively the decision is correct or not.

[e] Mr. Muktesh Patel also submitted that Manilal Ugarabhai Solanki, Ambalal Jethabhai and brother's wife of Ambalal Jethabhai were the persons who have encroached the land and because the petitioner raised objection to it, he has been victimized by this order. It may be noted that there is no material whatsoever to lend support to this argument and therefore, it cannot be accepted.

12. No other argument is advanced. No other case law is cited.

13. In view of the aforesaid, the petition therefore must fail and is hereby dismissed with no orders as to costs. Rule discharged.

[A.L.DAVE, J.]

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